Hamilton, AL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NTN BOWER CORPORATION

and Case 10-RD-105644

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

GINGER L. ESTES

DECISION AND DIRECTION OF THIRD ELECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on November 1, 2013, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 83 for the Union and 85 against, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs and has, for the reasons set forth below, adopted the hearing officer's findings and recommendations,[1] and finds that the election must be set aside and a new election held.

[1] In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the Union's Objections 1 and 3.

I.

The Union has represented employees in a unit of production and maintenance employees at the Employer's Hamilton, Alabama facility since 1976. Pursuant to a decertification petition filed on May 22, 2013, an election was held on June 21, 2013. Following the filing of objections by the Union to conduct affecting the results of the election, the parties executed a Stipulation to Set Aside Election.

Two days before the second election, Plant Manager Rufus McMillan held a series of captive audience meetings, which were attended by the entire workforce. The credited testimony of multiple witnesses establishes that during these meetings, McMillan repeatedly told employees that Hamilton was the Employer's only unionized facility, that employees at the plant had not received a raise in over a year, and that employees at the Employer's Macomb, Illinois facility made more money than they did.[2] McMillan admitted that, after reminding employees that Hamilton was the only plant with a union, he then asked: "The Union has been here for the last year -- how many raises have you received?"

The hearing officer found that McMillan's comments constituted an implied promise of higher pay if employees decertified the Union. She reasoned that the message employees took away from McMillan's statements was that they had not received a raise in over a year because they were represented by the Union and that they would get a raise if they rejected the Union in the upcoming election. We agree

[2] The Employer introduced the script that McMillan followed as evidence. The script consisted of a list of bullet points. The Employer also introduced the accompanying Powerpoint slides that were displayed during McMillan's speech. The six slides contained the same bullet points as the written script. Comments concerning higher wages at Macomb and Macomb's non-union status were included in two sections of McMillan's script, supporting the inference that McMillan made these comments at least twice during each meeting. Further, McMillan admitted that he made additional comments that were not included in the script.

that McMillan's comments constituted an implied promise of wage increases, requiring that the election be set aside and a new election held.

II.

An employer may lawfully inform employees of the wages and benefits its nonunion employees receive, and it may respond to requests for information from employees about such benefits. See, e.g., *Suburban Journals of Greater St. Louis, LLC*, 343 NLRB 157, 159 (2004). The Board will set aside an election, however, when the employer makes an implied promise of benefits to employees, which interferes with employees' free choice in the election. See, e.g., *Etna Equipment & Supply Co.*, 243 NLRB 596 (1979). Determining whether a statement is an implied promise of benefits involves consideration of the surrounding circumstances and whether, in light of those circumstances, employees would reasonably interpret the statement as a promise that benefits would be adjusted if the union were voted out. See *Viacom Cablevision*, 267 NLRB 1141, 1141 (1983). The Board views employer statements "from the standpoint of employees over whom the employer has a measure of economic power." *Mesker Door*, 357 NLRB No. 59, slip op. at 5 (2011) (citation omitted). That approach comports with the Supreme Court's admonition that the Board "take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear." Id. (quoting *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969)).[3]

[3] Contrary to our dissenting colleague's suggestion, Sec. 8(c) of the Act – as the Board has long held – does not apply in representation cases. E.g., *Kalin Construction Co.*, 321 NLRB 649, 652 (1996), citing *Dal-Tex Optical*, 137 NLRB 1782, 1787 fn. 11 (1962), and *General Shoe Corp.*, 77 NLRB 124, 127 & fn. 10 (1948).

The Board has long held that comparisons between union and nonunion facilities, and related statements of fact, may, depending on their precise contents and context, convey implied promises of benefits. See e.g., *Grede Plastics*, 219 NLRB 592, 593 (1975); *Westminster Community Hospital, Inc.*, 221 NLRB 185, 185 (1975), enfd. mem. 566 F.2d 1186 (9th Cir. 1977). Cases in this area turn on their particular facts.

Given the content of McMillan's remarks, considered in the context of their surrounding circumstances and viewed from the standpoint of employees, we agree with the hearing officer that employees would reasonably interpret what McMillan said as a promise of a raise if they decertified the Union. McMillan's repeated comparison of wages and raises between Hamilton and Macomb effectively equated the two facilities; McMillan pointed to no differences between them –- except, of course, that Hamilton was unionized and Macomb was not, and that the Macomb employees made more money. In the context of the decertification campaign, McMillan's statements clearly conveyed to the Hamilton employees that rejecting the Union would directly redound to their financial benefit.

Further, McMillan's repeated references to the failure of employees to receive a raise in over a year reasonably suggested to employees that they were overdue for a raise and could get one, if only they removed the Union from the equation. McMillan was a high-ranking official, and employees naturally would assume that he could act on this disparity, on which he focused so much attention. That he went to the trouble of making these statements to the entire workforce, in captive audience meetings just 2 days before the election, would only reinforce those perceptions.

As the hearing officer found, in addition to impliedly promising that wages would be raised if employees voted the Union out, McMillan's comments would reasonably tend to cause employees to fear that retaining the Union would foreclose future wage increases. That these unsolicited statements were entirely attributable to the Employer and did not come in response to an employee's question further supports a finding of an implied promise. See *Coca-Cola Bottling Co.*, 318 NLRB 814, 814–815, 814 fn. 3 (1995).[4]

Under all the circumstances, we agree with the hearing officer that McMillan's statements, as a whole, constituted an objectionable implied promise to employees that requires setting aside this close election. See *Grede Plastics*, 219 NLRB at 593.[5]

DIRECTION OF THIRD ELECTION

A third election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional

[4] We disagree with our dissenting colleague's view that we are procedurally barred from considering this reasonable *interpretation* of McMillan's statements as supporting the objection predicated on those statements. This is not a case where the Board is asked to set aside an election based on conduct that was not the subject of a timely objection.

[5] Our dissenting colleague cites cases, some of which we cite ourselves, for the proposition that an employer does not engage in objectionable conduct merely by providing employees with information comparing compensation at its union and nonunion facilities. We take no issue with that proposition, so far as it goes. Nevertheless, there is no clear line distinguishing fact from persuasion, and a presentation of comparative wage information may, through word choice, rhetorical emphasis, or other surrounding circumstances, convey to employees the message that their wages will be raised if they reject the union. We believe that message was conveyed here, and whether it was intentional or not is irrelevant. See, e.g., *Wausau Steel Corp. v. NLRB*, 377 F.2d 369 (7th Cir. 1967)("While we do not doubt that [employer's president] proceeded carefully in attempting to limit his communications to his employees to the legally permissible, his words must be judged by their likely import to his employees. As the trial examiner suggested, one who engages in 'brinksmanship' may easily overstep and tumble into the brink."). Although Board precedents in this area do not line up with "academic consistency," *NLRB v. Deaton, Inc.*, 502 F.2d 1221, 1228 (5th Cir. 1974), cert. denied 95 S.Ct. 2665 (1975), we are satisfied that the case law is consistent with a finding that the Employer engaged in objectionable conduct here.

Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Third Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the election directed herein and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the date of the election directed herein, and employees engaged in an economic strike that began more than 12 months before the date of the election directed herein and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Third Election. *North*

Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C., December 15, 2014.

Kent Y. Hirozawa, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Member Miscimarra, dissenting.

Board and court cases establish three important rules of the road regarding representation campaigns and the dividing line between permissible and objectionable employer statements about wages and benefits. First, it is objectionable either to promise better wages or benefits if employees reject the union, or to threaten employees with worse wages or benefits if the union wins. Second, it is permissible to make (and the Act protects) statements reflecting an employer's "views, argument, or opinion" concerning potential union representation, provided the statements contain no "threat of reprisal or force" or "promise of benefit."[6] Third, implicit in the protection

[6] Sec. 8(c) of the Act states: "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit." Although Sec. 8(c) makes specific reference to whether speech can constitute or be evidence of an "unfair labor practice," the section articulates standards that have been construed as applying to employer speech more

afforded to "views, argument, or opinion" is the permissible nature of communicating *facts* – for example, wages and benefits that have (or have not) been provided either to employees who will vote in the upcoming election, or to employees who work elsewhere or for someone else.

The Employer, through Plant Manager Rufus McMillan, told employees at its Hamilton, Alabama facility that employees at its nonunion Macomb, Illinois facility made more money than they did. McMillan also reminded Hamilton employees that they had not received a raise in over a year. Both statements were true, and the second statement merely reminded the Hamilton employees—those with at least one year's seniority—of what they already knew. Nonetheless, my colleagues find these statements constituted an *implied* "promise" to grant a wage increase if employees voted to decertify the Union. Here, my colleagues rely on "surrounding circumstances" that, in my view, are insufficient to change the employer's factual statements into a prohibited "promise" (explicit or implied). I dissent in this case because my colleagues' decision is contrary to controlling Board precedent and misapplies relatively narrow cases where an "implied" promise has been found to exist based on circumstances very different from those presented here.[7]

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generally. See, e.g., *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969) ("[A]n employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the National Labor Relations Board"); *Chamber of Commerce v. Brown*, 554 U.S. 60, 67-68 (2008) (Sec. 8(c) reflects a "policy judgment, which suffuses the NLRA as a whole, as favoring uninhibited, robust, and wide-open debate in labor disputes.") (internal quotation omitted); *Healthcare Assn. of N.Y. State v. Pataki*, 471 F.3d 87, 98–99 (2d Cir. 2006) (Section 8(c) "serves a labor law function of allowing employers to present an alternative view and information that a union would not present."); *United Rentals, Inc.*, 349 NLRB 190, 191 (2007) ("[T]ruthful statements that identify for employees the changes unionization will bring inform employee free choice which is protected by Section 7 and the statements themselves are protected by Section 8(c).").

[7] See, e.g., *Westminster Community Hospital, Inc.*, 221 NLRB 185 (1975) (implied promise found where employer compared wage rates at union and nonunion hospitals while blaming

Facts

The Union has represented employees at the Hamilton facility since 1976. Employees at the Employer's other facilities, including one in Macomb, Illinois, are unrepresented. Two days before the decertification election at issue here, Plant Manager Rufus McMillan held a series of meetings with employees—one meeting per shift—at which he discussed issues raised in the campaign. The presentations included PowerPoint slides projected on a wall while McMillan read an accompanying script. He began by reciting Union claims that the Union "protects your pay and gets raises for you," and that employees' pay would be cut and they would get only a 4 cents an hour increase if the Union were decertified. McMillan responded, accurately, that

- [The] Union has been here for many years; yet, Macomb makes more money than you do.
- [The] Union has been here for the last year—how many raises have you received?
- [The] [f]irst proposal from company was $.04 increase—it is called negotiating! Union has not negotiated for 4 months. Are they "protecting" your pay by doing nothing?
- Bottom line: The union has not made good on its claims.

McMillan also stated that Hamilton was the only plant that has a union. After discussing wages, McMillan went on to list, and respond to, other Union claims that benefits and health insurance would be cut if the Union was not there and that the Employer has

union, falsely, for employer's claimed inability to grant benefits), enfd. mem. 566 F.2d 1186 (9th Cir. 1977); *Grede Plastics*, 219 NLRB 592 (1975) (employer characterized nonunion employees as a "team," told union employees that nonunion employees received larger and more frequent raises and better benefits, and urged them to join "this successful team"—implying that if they joined nonunion "team" they would enjoy "team" benefits).

been cited for OSHA violations. The presentation concluded with McMillan asking employees to "VOTE 'NO' TO THE UAW!"

The election was held November 1, 2013. The vote was 85 to 83 to decertify the Union, with no challenged ballots.

Discussion

"Representation elections are not lightly set aside," and "[t]here is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees."[8] Accordingly, "the burden of proof on parties seeking to have a Board-supervised election set aside is a 'heavy one.'"[9]

An employer is permitted to compare its represented employees' wages and benefits with those of unrepresented employees.[10] Additionally, it is lawful and unobjectionable for an employer to state its opinion, based on such a comparison, that employees would be better off without a union.[11] An employer also may make "statements of historical fact concerning the yearly increases which ha[ve] been given elsewhere [at nonunion facilities] in the past."[12]

Precedent compels the conclusion that the Employer's presentation regarding wages was unobjectionable. Neither the hearing officer nor my colleagues identify a single inaccuracy in the statements at issue. Responding to the claims that the Union "protects your pay and gets raises for you," McMillan accurately stated that (unrepresented) Macomb employees receive higher wages and that Hamilton

[8] *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991).
[9] *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989) (quoting *Harlan #4 Coal Co. v. NLRB*, 490 F.2d 117, 120 (6th Cir. 1974), cert. denied 416 U.S. 986 (1974)).
[10] E.g., *TCI Cablevision of Washington*, 329 NLRB 700 (1999).
[11] *Suburban Journals of Greater St. Louis*, 343 NLRB 157, 159 (2004); *Langdale Forest Products Co.*, 335 NLRB 602 (2001).
[12] *Viacom Cablevision,* 267 NLRB 1141, 1142 (1983).

employees had not received an increase in the past year. McMillan made neither promise nor threat: he did not say that Hamilton employees would receive a raise if they decertified the Union, nor did he say that they would not receive a raise if they retained the Union.

The Board has held unobjectionable employer statements comparable to and going beyond those at issue here. It found nothing objectionable in an employer's pre-election statements that wages at two of its nonunion facilities were higher than those of unit employees, that employees at one facility who had voted to decertify had done better than employees at another facility who had voted to remain represented, and that wages at its nonunion facilities had always been increased yearly.[13] Likewise, the Board found that it was not objectionable for an employer to accurately report that its unrepresented employees were covered by a 401(k) plan and that "*no union* has been able to get the [401(k)] plan on a contract from" the employer.[14] And the Board upheld the election where the employer provided unit employees with an outline of unrepresented employees' benefits and a comparison of how much union and nonunion employees paid for insurance.[15] There, as here, the employer "compared only benefits already in existence, rather than projecting future benefits if employees chose to be unrepresented."[16]

Undeterred by contrary precedent, the majority finds that the Employer's presentation amounted to an implied promise of benefits "under all the circumstances." The following "circumstances" are relied upon by my colleagues:

[13] Id. at 1141.
[14] *TCI Cablevision*, 329 NLRB at 701 (emphasis in original).
[15] *Suburban Journals of Greater St. Louis*, 343 NLRB at 159.
[16] Id.

1. The statements were made in "the context of [a] decertification campaign";
2. McMillan made "repeated references to the failure of employees to receive a raise in over a year";
3. McMillan was "a high-ranking official";
4. McMillan addressed the entire workforce in captive audience meetings;
5. McMillan spoke to employees two days before the election; and
6. McMillan made his factual statements on his own initiative (he was not responding to an employee's question).

None of these so-called "surrounding circumstances" reasonably convert McMillan's statements of fact into an implied promise. My colleagues' reliance on these "surrounding circumstances," in an effort to argue McMillan's statements fall within the exception to the blanket rule that an employer may communicate facts to employees during representation and decertification campaigns, cannot be reconciled with the Board's own precedent.

The first circumstance—referring to an ongoing decertification campaign—suggests that protected statements of fact become unlawful "promises" if they are conveyed during a campaign that precedes a decertification election as opposed to other types of elections. No cases support the proposition that a pending decertification petition is a "circumstance" that converts protected statements about facts into unlawful promises or threats. Board-conducted elections involve the same protected rights – for employees, unions and employers – regardless of the type of election taking place.

The second circumstance—McMillan's "repeated references" to the fact that employees had not received a raise in over a year—is a statement of fact. Repeating it

did not change its nature as a statement of fact. The rule protects statements of fact. Moreover, it was repeated because McMillan held three meetings, one on each shift. The statement was made only once per meeting. Besides, McMillan was not saying anything employees did not already know.

The third and fourth circumstances—that the speaker was "a high-ranking official," and that the statements were made to the entire workforce —are true of cases in which the Board has found statements of fact lawful or unobjectionable.[17]

The fifth circumstance—that the statements were made 2 days before the election—cannot without more (and there is no "more") warrant a finding of objectionable conduct under *Peerless Plywood*.[18]

The sixth circumstance—that McMillan was not responding to an employee's question—ignores that McMillan *was* responding to claims by the Union. More importantly, it disregards Board precedent holding that "where . . . an employer is truthful and makes no promises or threats, it is immaterial that the [e]mployer was the one who raised the issue."[19]

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[17] See *Suburban Journals of Greater St. Louis*, 343 NLRB at 157 (statements made by human resources manager to each unit employee in individual meetings; found unobjectionable); *Langdale Forest Products*, 335 NLRB at 602 (statements made by general manager in newsletter mailed to all employees; found lawful); *TCI Cablevision*, 329 NLRB at 700 (statements made by three managers at three pre-election captive audience meetings; found unobjectionable); *Viacom Cablevision*, 267 NLRB at 1141 (statements made by agents of employer, including general manager, at several meetings with various groups of employees; found unobjectionable). Each of these cases involved a decertification election, further contradicting the first circumstance on which the majority relies.

[18] *Peerless Plywood Co.*, 107 NLRB 427 (1953) (establishing bright-line rule against election speeches on company time to massed assemblies of employees within 24 hours of election, and adding that "non-coercive speeches made prior to the proscribed period will not interfere with a free election"). In *Suburban Journals of Greater St. Louis*, supra, the allegedly objectionable statements were made during the last week of July, just days before the August 4 election, and the Board upheld the election.

[19] *TCI Cablevision*, 329 NLRB at 701 (citing *Duo-Fast Corp.*, 278 NLRB 52 (1986)).

My colleagues cite no case in which the Board has found an implied promise of benefits under circumstances such as those presented here. If circumstances like these negate the rule that permits employers to truthfully describe wages and benefits provided to existing represented and unrepresented employees, then the rule becomes illusory—the exception has swallowed it. Regardless whether such a comparison shows that represented employees have received higher or lower wages and benefits, our cases uniformly establish that these facts can appropriately be communicated during election campaigns.

The majority claims that McMillan "clearly" conveyed to employees that rejecting the Union would make Hamilton like Macomb, to the financial benefit of employees, because he compared their "wages and raises" but pointed to no differences between them except that Hamilton was unionized and Macomb was not.[20] But the Board upheld similar comparisons in *TCI Cablevision, Viacom, Langdale,* and *Suburban Journals* where the employers similarly offered no reason for the differences in wages and benefits between represented and unrepresented employees. My colleagues fail to distinguish those cases or explain why the Employer was required to do more in this case.[21] The majority also claims that the Employer's "repeated" references to the failure of employees to receive a raise in over a year reasonably suggested that they were

[20] In fact, McMillan said nothing about raises at Macomb, so my colleagues err in finding that the Employer compared raises. Such a comparison, if made, would have been lawful in any event. *Viacom Cablevision*, 267 NLRB at 1141 (statement that wages in employer's nonunion facilities "have always been increased yearly" not a promise of benefits).

[21] Moreover, my colleagues improperly place the burden of proof on the Employer to justify wage and benefit differences between union and nonunion employees in order to avoid a finding of objectionable conduct. Absent unlawful motivation, an employer may provide union and nonunion employees different wages and benefits. *Shell Oil Co., Inc.*, 77 NLRB 1306, 1310 (1948). In an unfair labor practice case, the burden is on the General Counsel to prove an unlawful motive for the difference—not on the employer to justify it. Here, however, my colleagues place the burden on the Employer to justify the difference.

overdue for a raise and would get one if they voted to decertify, but that retaining the Union would foreclose future wage increases.[22] But the Employer merely stated a historical fact, and the statement was well within the boundaries our precedent marks out for unobjectionable conduct.[23]

Our statute provides that employees should decide for themselves whether or not to be represented by a union. It is the basic judgment of Congress that employees can best exercise that right if they are fully informed by the parties to the election of the reasons for and against unionization.[24] Today's decision departs from that cornerstone principle, effectively precluding employers from providing accurate information in

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[22] McMillan "repeated" this statement because he made a presentation on each shift. Each group of employees heard the statement once.

[23] See, e.g., *Langdale Forest Products*, 335 NLRB at 602 (finding no violation where employer stated that based on the "small increases negotiated" by the union, "compared with the larger increases given in our other non-union facilities, you certainly would have been better off here without the union"); *TCI Cablevision*, 329 NLRB at 700 (not objectionable for employer to state accurately that "no union has been able to get" 401(k) plan employer offered to unrepresented employees). The hearing officer mistakenly questioned whether *Langdale* represents "the modern Board's view regarding what constitutes an unlawful promise or threat." In fact, *Langdale* remains good law and has been cited with approval and applied by the Board. See, e.g., *Medieval Knights, LLC,* 350 NLRB 194 (2007).

Insofar as they find that the Employer made an objectionable *threat* that employees would not receive a wage increase unless they decertified the Union, my colleagues exceed the scope of the objections. The relevant objection alleges only that the Employer "informed employees that they would have higher wages if the Union lost the election." Any finding of an objectionable threat to *withhold* wage increases if the Union *won* is beyond the scope of this objection. See *Precision Products Group,* 319 NLRB 640, 641 fn. 3 (1995), and cases cited therein.

[24] See Sec. 8(c) of the Act. Again, although Sec. 8(c) is not, by its terms, applicable to representation cases, "'the strictures of the [F]irst [A]mendment . . . must be considered in all cases.'" *Allegheny Ludlum Corp.*, 333 NLRB 734, 737 fn. 20 (2001) (quoting *Dal-Tex Optical Co.*, 137 NLRB 1782, 1787 fn. 11 (1962)). The enactment of Sec. 8(c) in the 1947 Taft-Hartley amendments "manifested a 'congressional intent to encourage free debate on issues dividing labor and management.'" *Chamber of Commerce v. Brown,* 554 U.S. at 67 (quoting *Linn v. Plant Guard Workers*, 383 U.S. 53, 62 (1966)). The Supreme Court has held that Sec. 8(c) reflects "a policy judgment, which suffuses the NLRA as a whole, as 'favoring uninhibited, robust, and wide-open debate in labor disputes,' stressing that 'freewheeling use of the written and spoken word . . . has been expressly fostered by Congress and approved by the NLRB.'" Id. at 68 (quoting *Letter Carriers v. Austin*, 418 U.S. 264, 272-273 (1974)). After today's decision, the Court might want to reconsider that last phrase.

circumstances that have broad application to virtually every election. Although this decision is unpublished and thus not precedential,[25] the outcome here represents an unwarranted departure from numerous Board and court cases. Accordingly, I must respectfully dissent.

Dated, Washington, D.C., December 15, 2014.

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Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

[25] *Associated Builders & Contractors*, 331 NLRB 132, 140 fn. 17 (2000).